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In the High Court of Judicature at Madras

Dated: 24.2.2006

Coram:

THE HONOURABLE MR.JUSTICE S.R.SINGHARAVELU

CIVIL REVISION PETITION (PD) NO.42 OF 2006
and
C.M.P.No.450 of 2006

1. Subbalakshmi Sankaranarayanan
2. S.Chandrasekar ... Petitioners/Defendants 2,3

Vs.

V.Elumalai ... Respondent/Plaintiff

Civil Revision Petition under Article 227 of Constitution of India against the order dated 7.11.2005 made in I.A.No.329 of 2005 in O.S.No.159 of 2004 passed by the Subordinate Judge, Chengalpattu.

For Petitioners : Mr.C.T.Mohan
For Respondent : Mr.N.S.Mukundan

O R D E R

The second and third Defendants in a suit for specific performance filed by the Respondent in O.S.No.159 of 2004 on the file of the Subordinate Judge, Chengalpattu are the Revision Petitioners. They are the wife and son of the first Defendant in the suit against whom the relief of specific performance was sought for.

2. The impugned order is the dismissal of the application of the Revision Petitioners to struck of their defence of construing them as unnecessary parties in the said suit.

3. On a perusal of the plaint it is found that the prayer is as follows:-

"11(a) to direct the first defendant to execute and register the sale deed in favour of the plaintiff or his nominee or nominees in respect of the suit property on receipt of balance sale consideration of Rs.2,75,000/- as per agreement dt. 30.11.2003, failing which ...."

4. But in the body of the plaint in para 4 it was pleaded as if the second and third defendants acted on behalf of the first defendant, agreed to sell the suit property for Rs.3,30,000/- and executed a letter of undertaking on 26.11.2003 and also received a cheque for Rs.50,000/- in the name of first defendant and a cash of Rs.5,000/-.

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5. The prayer is based upon an agreement of the first defendant with the plaintiff said to have been executed on 30.11.2003.

6. Although the suit prayer was based on the averments in para 4 of the plaint upon a letter of undertaking dated 26.11.2003 said to have been executed by the second and third defendants who are the wife and son of the first defendant, it has been emphatically contended in the said para of the plaint that such transactions of the defendants 2 and 3 with the plaintiff was made only on behalf of the first defendant.

7. Thus, it is understandable that the plaintiff's agreement was with the first defendant and some part of the transaction was made by defendants 2 and 3 only on behalf of the first defendant. Therefore, it comes to know that the parties to the agreement are only the plaintiff and the first defendant.

8. If at all the action said to have been done on behalf of the first defendant by the Revision Petitioners/defendants 2 and 3, the plaintiff can summon the latter and try to prove the case of agreement of first defendant with the plaintiff. Nowhere in the plaint it was stated that the Revision Petitioners/Defendants 2 and 3 were parties to the agreement. True it is found that there was a plea that the Revision Petitioners/Defendants 2 and 3 executed a letter of undertaking on 26.11.2003; but it was said to have been done on behalf of the first defendant. Even the cheque received thereunder was found only in the name of the first defendant; and the receipt of the balance of Rs.5,000/- even though was made by the Revision Petitioners/Defendants 2 and 3 it was only on behalf of the first defendant.

9. Some guidelines given by various High Courts and Supreme Court invoking Order I Rule 10 C.P.C. were observed in Antony Devaraj and another v. Aralvaimozhi (Kurusadi) Devasahayam Mount Dor and Thuya Viagula, Annai Church represented by the Trustee and others[(2004)2 M.L.J 111] in the following lines:-

> "(i)....It is open for the Court to add at any stage of the suit, a necessary party in order to enable the Court to effectually and completely adjudicate upon the questions involved in the suit.
> (ii) A necessary party is one without whom no order can be effectively made. A proper party is one whose presence is necessary for a complete and final decision of question involved in the proceedings.
> (iii) What makes a person a necessary party is not merely that he has relevant evidence to give on some of the questions involved, but it should make him as necessary witness.
> (iv) Mere ground that inclusion of the proposed third party would not alter the structure of the suit may not entitle the party to ask the Court to implead the third party as a defendant.
> (v) The discretion vested with the Court though wide is however circumscribed by the limitations which are built in the provisions contained in O.1, Rule 10(2), C.P.C. where a person is neither necessary nor proper party, the Court has no jurisdiction to add him as a party.

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(vi) The reason is that the plaintiff is 'dominus litis.' He is the best judge of his own interest and it should be left to him to choose his opponent from whom he wants relief.

(vii) A person is not to be added as a defendant merely because he or she would be incidentally affected by the judgment.

(viii) Persons whose interests would be affected by the litigation are entitled to come on record to protect their interests when those are jeopardised by the persons already on record..."

The above said principles have been laid down in the following cases:

(i) P.R.Nallathambi v. V.Raghavan, A.I.R.1973 Mad. 25; (ii) N.C.Garai v. Matri Bhandar, A.I.R.1974 Cal. 358; (iii) Lakshmi Narain v. District Judge, Fatehpur, A.I.R. 1992 All.119; (iv) Somasundaram Chettiar v. Balasubramanian, (1998)1 C.T.C. 626.

10. In the light of the above observations and that the factual position regarding the claim of the plaintiff is only against the first defendant based upon an agreement made by him or upon the letter of undertaking even though executed by the defendants 2 and 3 was made so only on behalf of the first defendant, the plaintiff has rightly sought for the relief only against the first defendant and there is no personal agreement with defendant 2 and 3 even as per the averments of the plaint they become unnecessary parties.

11. In the result, this Civil Revision Petition is allowed. The order dated 7.11.2005 made in I.A.No.329 of 2005 in O.S.No.159 of 2004 passed by the Subordinate Judge, Chengalpattu is set aside. No costs. Consequently, C.M.P.No.450 of 2006 is closed.

gr.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

To

The Subordinate Judge, Chengalpattu.

1 cc To Mr.N.S.Mukundan, Advocate, SR.8666.
1 cc to Mr.G.T.Mohan, Advocate, SR.9012.

PRE DELIVERY ORDER IN
C.R.P.(PD)NO.42 OF 2006

GM(CO)
RVL 01.03.2006

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